

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

3:07cv246-03-C

(3:05cr379-2-C)

THEODORE HOWZE, III,

Petitioner,

v.

UNITED STATES OF AMERICA

Respondent.

ORDER

THIS MATTER comes before the Court upon Petitioner's Motion to Vacate, Set Aside, or Correct Sentence, filed June 25, 2007 (Doc. No. 1) and the Government's Answer, filed July 30, 2007 (Doc. No. 3).¹

After careful review of the pleadings, the Court has determined that an evidentiary hearing is necessary to resolve Petitioner's claim that his attorney refused to file an appeal.

Rule 8(c) of the Rules Governing Section 2255 Proceedings requires the appointment of counsel for such a hearing if the petitioner qualifies under 18 U.S.C. § 3006A. Petitioner previously qualified for appointed counsel in the underlying criminal case (Case No. 3:05cr379-2: Doc. No 5), and the Court is not aware of any change in Petitioner's financial status. Accordingly, the Court finds that the defendant qualifies for appointed counsel in this matter.

¹ The Court notified Petitioner of his right to file a response to the Government's Answer (Doc. No. 4), but, as of the date of this Order, Petitioner has not filed a response.

IT IS, THEREFORE, ORDERED that:

1. an evidentiary hearing regarding Petitioner's claim that his attorney refused to file an appeal is scheduled for Monday, December 3, 2007, at 10:00 a.m. in Courtroom Two of the United States Courthouse in Charlotte, North Carolina; and
2. the Community Defender shall designate counsel promptly to represent Petitioner on the limited issue at the evidentiary hearing.

The Clerk is directed to certify copies of this Order to Petitioner, the Community Defender and to the United States Attorney.

Signed: September 7, 2007

A handwritten signature in cursive script, reading "Robert J. Conrad, Jr.", written over a horizontal line.

Robert J. Conrad, Jr.
Chief United States District Judge

